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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,019	02/11/2004	Tushar Patel	101896-0234	2233
21125 7590 05/07/2007 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			EXAMINER COMSTOCK, DAVID C	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 05/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

8p

# Office Action Summary

Application No. 10/777,019		Applicant(s) PATEL ET AL.	
Examiner David Comstock		Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 19-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 27-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____  |

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :  
08 October 2004, 08 October 2004 (electronic), 17 September 2004, 07 May 2004.

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Species II, in the reply filed on 15 February 2007 is acknowledged. Examiner does not agree that all of claims 1-8, 13, 16-21, 27-33, 37-42, 47, and 51-55 are generic, since, for example, the mating element of claims 19-21 is shown as a feature of the non-elected embodiment. Therefore, claims 1-18 and 27-55 are generic or directed to the elected species and claims 19-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election of Species II was made **without** traverse in the reply filed on 15 February 2007.

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the post and clamp member of claims 29 and 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 29 and 30 are objected to because of the following informalities: The clamp and post must be shown in the drawings or canceled from the claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14, 16, 17, 27, 29-48 and 51-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Oxland et al. (5,676,666; cited by applicant).

Oxland et al. disclose an elongate member 62 comprising planar retracting surfaces 72, 74, and guide members 80, 82 having pathways extending therethrough (see Fig. 1). The planar surfaces have a width that is greater than that of each guide. The lumens extend at an angle to one another. The device includes extension cleats 76 on a distal portion of the device, and the distal portion is disposed at an angle to the proximal portion. The hinge of the device constitutes the claimed cross member. The device attaches to a plate 10 having superior 36 and inferior 38 portions with holes 34 (see Figs. 2-8). The device includes cutout portions and the lateral sidewalls necessarily comprise at least a generally C-shape because they are circular.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 18, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oxland et al. (5,676,666; cited by applicant) in view of Kurland (4,686,972; cited by Applicant).

Oxland discloses the claimed invention except for the concave end portions. Kurland also discloses a drilling guide 10 and provides concave ends 6 to facilitate proper seating on the drilling target (see Figs. 1 and 2 and col. 1, lines 48-57, and abstract). It would have been obvious to one having ordinary skill in the art at the time

the invention was made to provide the device of Oxland et al. with a concave end portion, in view of Kurland, in order to facilitate proper seating on a drilling target and improve the procedure.

Claims 28, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oxland et al. (5,676,666; cited by applicant).

Oxland discloses the claimed invention except for explicitly disclosing the angular range of about 110 to about 160, as between the proximal and distal portions of the device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device within a range of 110 and 160 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It also would have been obvious to make portions of the plate slidably movable, since it has been held that the provision of adjustability involves only routine skill in the art, and it would be desirable to properly position and fix the plate. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

### ***Double Patenting***

Claims 1-30, 37-42 and 47-55 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/609,123. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the terminology used to describe similar features.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER